Supreme Court, U.S.
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No. 04-1278

In The

Supreme Court of the United States

ELIZABETH KLIMAS, an individual,

Petitioner,

v.

K. KARAGOZIAN, individually and in his capacity as employee of the IRS; UNITED STATES DEPARTMENT OF TREASURY; INTERNAL REVENUE SERVICE; UNITED STATES DEPARTMENT OF JUSTICE; and JOHN DOES 1-10, et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether, any provision of the Constitution of the United States of America empower an Article III court to promulgate and conjure sovereign Immunity upon the United States of America and/or absolute immunity to any federal public servant?

2. Whether, these immunities incorporated into our judicial system are by lawful authority?

3. Whether, is known by whom, or when these common-law principles of legislative and judicial immunities were incorporated into our judicial system?

4. Whether, since the Government respondents in the District Court choose, general or otherwise, not to admit or deny, the factual allegations of the petitioner's complaint, but instead rely upon an affirmative defense of sovereign and/or absolute immunity to bar litigation of petitioner's lawsuit. Did the District Court err in dismissing the case in favor of the Government defendants without judicially determining or establishing the constitutional validity of the judicially created concepts of sovereign immunity?

PARTIES TO THE PROCEEDING

The caption of the case contains the names of all the parties to the proceeding.

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PETITION FOR A WRIT OF CERTIORARI

Elizabeth Klimas, an individual, respectfully petitions for a writ of certiorari to review the decision of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The memorandum of the court of appeals, App. 1, is not reported. The opinion and order of the district court, App. 2 is not reported.

JURISDICTION

The memorandum of the court of appeals was submitted on February 7, 2005. Motion for stay of mandate was presented to the clerk of U.S. court of appeals, on February 16, 2005, to move for a stay of mandate pending a petition for a writ of certiorari. Jurisdiction of the Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

1. The First Amendment to the United States Constitution provides, in part: "Congress shall make no law . . . abridging . . . the right of the people . . . to petition the Government for a redress of grievances."

2. *Two Due Process Clauses in the Constitution:*

A) The Fifth Amendment: "No person shall be . . . deprived of life, liberty, or property, without

due process of law." (applies to the federal government)

B) The Fourteenth Amendment to the United States Constitution, section 1, provides, in part: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; . . . ."

3. The Ninth Amendment to the United States Constitution, with the Right to Be Left Alone and Not To Be Harassed . . .

STATEMENT

1. Petitioner is an individual and citizen of the United States, who seeks to obtain redress for the deprivation and conspiracy to deprive petitioner of her constitutionally protected rights as thereafter alleged, felony crimes perpetrated on her, and for intentional infliction of anguish and emotional distress, financial losses, and for defamation of character and name. The petitioner asked the court for admission as evidence documents that include Certificate granted to petitioner by the California Secretary of State, acknowledging petitioner as a victim of crimes that included: police assisted kidnapping, police assisted stalking, police assisted robberies and burglaries, which they willfully neglected to investigate, and further obstructed justice by misprision of felony as defined by 18 U.S.C.A. Sec. 4; The Van Nuys Police Department of California and the Kent Police Department of Washington State who became "witnesses" for the criminals.

Furthermore, the Internal Revenue Service perpetrated financial crimes, and was used as an "accessory to felony child kidnapping," criminal civil rights violation, was an aider and abettor, and the Internal Revenue Service did willfully aid, abet, assist, and cause to be so made and false statements subscribed, as an income tax return in petitioner's name. The IRS herein, did unlawfully, willfully, and knowingly conspired, combined, confederated, and agreed together and with each other and with other individuals both known and unknown to petitioner to defraud petitioner for the purpose of impeding, impairing, obstructing, socializing, and defeating the lawful, civil and Constitutional rights of petitioner in the ascertainment, computation, assessment, and collection of the revenue from petitioner the IRS is not entitled to, deliberately postponed by the IRS until the time when petitioner started earning her income above the minimum wages in 1995. Covering up the felony child kidnapping at the same time.

In furtherance and commission of the conspiracy, false statements and representation were made to agent of the Internal Revenue Service for the purpose of concealing the felony child kidnapping and make it legitimate, to extort from petitioner, to financially defraud and financially destroy petitioner, and thereafter to have petitioner permanently abandon her residence in the United States – her homeland for all of the above mentioned reasons.

The IRS then as a co-conspirator, did willfully and knowingly falsify, conceal, and cover up, by trick, scheme, or device, in a matter within the jurisdiction of the Agency, the true facts, instead promoting communism, illegal arrest warrant for petitioner to prevent child recovery effort, illegal seizure of property and money that include

federal student loan for the purpose of defrauding petitioner. All attempts made by petitioner to prosecute criminals for crimes committed were unsuccessful and effectively stopped by the government's Agencies named as the parties to this lawsuit.

2. On August 11, 2003, plaintiff Elizabeth Klimas filed a complaint against defendants United States Treasury Department, Internal Revenue Service ("IRS") to quit title to her property ("Federal Tax Lien"). On October 8, 2003, the district court issued judgment dismissing the complaint and action for lack of subject matter jurisdiction.

Following Notice Of Appeal was entered in this action on October 14, 2003. Initially no governmental action of any kind was commenced until after the deadline to respond. On Ninth Circuit Court's Motion for the government to extend the time, the extension was granted.

3. A panel of the court of appeals affirmed the district court's decision in Memorandum issued on February 7, 2005. Motion For Stay Of Mandate was filed pursuant to Ninth Circuit Rule 41(a)(2) pending a petition for a writ of certiorari in the Supreme Court of the United States.

REASONS FOR GRANTING THE PETITION

The Government is a government of expressed and limited powers, and all powers of the People not delegated to the Government are retained by the People and by the States. The First Amendment to the Constitution contains a series of rights. The First Amendment establishes the

following rights: (1) *freedom of religion*, (2) *freedom of speech*, (3) *freedom of the press*, (4) *the right to peaceably assemble*, and (5) *the right to petition the government for a* ***redress of grievances.***

In the case of *Edwards v. South Carolina* decided by the Supreme Court on February 25, 1963, Justice Steward acknowledges in the opinion of the Court that the right "to petition the Government for a redress of grievances" is a separate right. In this opinion Justice Steward writes, "South Carolina infringed the petitioners' constitutionally protected rights of free speech, free assembly, and freedom to petition for redress of their grievances. It has long been established that these First Amendment freedoms are protected. . . ."

The First Amendment forbids the making of any law that restricts any of the Rights listed. The last phrase in the series of Rights – the right to petition the government for a redress of grievances – makes it clear that every citizen has the constitutionally protected Right to *petition* the Government for a *redress of grievances*. It is one of our most comprehensive Rights; and one of the ways the Constitution guards against Government abuses, in order to prevent Government officials who are vested with authority from becoming oppressors. Black's Law Dictionary defines:

> ***petition*** as a formal written application to a court requesting judicial action on a certain matter.
>
> ***redress*** as satisfaction for an injury or damages sustained.
>
> ***grievance*** as an injury, injustice or wrong, which gives ground for complaint.

Black's Law Dictionary defines:

> ***complaint*** as a pleading, which sets forth a claim for relief.
>
> ***complainant*** as one who applies to the courts for legal redress by filing a complaint.

The definition of the word petition tells us that a petition can be a document other than a sheet of paper with lots of signatures on it. A citizen's formal written application to a court requesting judicial action on a certain matter (a **petition**) that sets forth a claim for relief and satisfaction for an injury (**redress**), injustice or wrong sustained (**grievance**) ***is the filing of a lawsuit.***

I. THE FILING OF A LAWSUIT IS A CONSTITUTIONALLY PROTECTED RIGHT TO PETITION THE GOVERNMENT.

The constitutionally protected right to petition the Government for a redress of grievances includes our right to file a lawsuit against the Government. Here is proof! Since this country was born, a person who files a lawsuit or complaint has been referred to as a petitioner. The person bringing the lawsuit is referred to as the petitioner in the following Supreme Court cases: *United States v. Clarke, Vitarelli v. Seaton, Butz v. Economou, Data Processing Service v. Camp, Malley v. Briggs.* More proof!

One of the first governing documents that *We the People* used was the Articles of Confederation. Here is portion of Article IX of the Articles of Confederation:

> The United States in Congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter

> may arise between two or more States concerning boundary, jurisdiction, or any other cause whatever; which authority shall always be exercised in the manner following: – Whenever the legislative or executive authority or lawful agency of any State in controversy with another shall present a *petition* to Congress *stating the matter in question and praying for a hearing*, notice thereof shall be given by order of Congress to the legislative or executive authority of the other State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question; but if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen. . . .

In the Articles of Confederation, a State presented its appeal of a dispute against another State in the form of a *petition* stating *the matter in question and praying for a hearing*. The filing of a petition stating the matter in question and praying for a hearing is the same as the filing of a lawsuit and asking for a trial! More proof!

U.S. separated from Great Britain. In the 1803 case of *Marbury v. Madison*, Chief Justice Marshall said, "In Great Britain the king himself is sued in the respectful form of a *petition*, and he never fails to comply with the judgment of his court." The filing of a lawsuit by a citizen is only ***one*** method of petitioning the Government for a redress of grievances. The First Amendment protects ***all*** of the methods that a citizen may use to petition the

Government for a redress of grievances because the First Amendment prohibits any law restricting the Right to petition the Government for a redress of grievances by stating "Congress shall make no law . . . abridging . . . the right of the people . . . to petition the Government for a redress of grievances." Congress is the only Government body granted law-making power by the Constitution. If Congress is prevented from making a law, then no law can be made.

The Supreme Court established sovereign immunity in the case of *Chisholm v. Georgia* in 1793, absolute immunity for judges in the case of *Bradley v. Fisher* in 1872, absolute immunity for prosecutors in the case of *Yaselli v. Goff* in 1927, and qualified immunity for Government officials in the case of *Procunier v. Navarette* in 1978. Sovereign, absolute, and qualified immunity are not based on the Constitution or any laws passed by Congress. They are the result of the personal views of Supreme Court Justices based on what the Justices believe the law *should* be – ***not what the law actually is***. The Justices of the Supreme Court use "the common-law" as a basis for these immunities. Common-law originated in England. It is not based on the Constitution or any laws passed by Congress. The Supreme Court adopted these immunities because the Justices on the Supreme Court believe that these immunities are necessary (1) for the proper functioning of the Government and (2) to protect the Government and Government officials from lawsuits filed by citizens to redress grievances against the Government or Government officials.

The Constitution is the supreme law of the land. The power to decide what laws or immunities are necessary for the proper functioning of the Government, with some

exceptions to that power, is specifically **given to Congress** in Article I of the Constitution. The Constitution delegates ***the administration of justice*** and ***the application*** of the law of the land to the federal courts. The Constitution does not grant any federal judge the power to decide what laws or immunities are necessary for the proper functioning of the Government. Federal judges, including the Justices on the Supreme Court, may not exercise the power of law making because they are not granted any law making authority in the Constitution. Deciding what is and what is not going to be a law of the United States is a law making function and the law making function belongs to Congress.

In the cases of *Pulliam v. Allen*, Volume 466 of the United States Reports, page 529, *Pierson v. Ray*, Volume 386 of the United States Reports, pages 554-555, and *Tenney v. Brandhove*, Volume 341 of the United States Reports, page 367 the Supreme Court uses the following rationale to explain common-law immunities: "Our cases have proceeded on the ***assumption*** that common-law principles of legislative and judicial immunity were incorporated into our judicial system and that they should not be abrogated absent clear legislative intent to do so." The first question is "by who, or by what and when were these common-law principles of legislative and judicial immunities incorporated into our judicial system?" The second question is "were these immunities incorporated into our judicial system by lawful authority?" The Supreme Court doesn't tell us who, what, or when regarding the incorporation of these immunities into our judicial system. The Justices of the Supreme Court based a decision of monumental importance not on a fact or even an inference, but on an **assumption.**

II. THE CONSTITUTION PREVENTS THE JUSTICES OF THE SUPREME COURT FROM ASSUMING!

A. Justice requires that cases be decided based on the law and the facts! There is no assuming!

The common-law principles of legislative and judicial immunity ***ARE NOT*** part of the Constitution or the laws of the United States. If the Constitution incorporated any of those common-law principles, then we would find wording in the Constitution similar to "such parts of the common-law . . . as did form the law of . . . on the nineteenth day of April, one thousand seven hundred seventy-five. . . . "

The New York State Constitution has just such wording in it, and it was in existence before the Constitution! The Commonwealth of Virginia, in the Code of Virginia, Title 1, Chapter 2, Section 1-10, also incorporated the common-law into its law by stating "The common law of England, insofar as it is not repugnant to the principles of the Bill of Rights and Constitution of this Commonwealth, shall continue in full force within the same, and be the rule of decision, except as altered by the General Assembly." The Framers could have included the wording from either the New York State Constitution or the Code of Virginia in the Constitution. They chose not to. In Article VI of the Constitution, the Framers included a provision for all debts and engagements entered into *before* the Constitution to be valid under the Constitution, as under the Confederation. The Framers could have included similar wording regarding the common-law. They chose not to. The Constitution does not incorporate any common-law principles of immunity.

III. THE COMMON-LAW IMMUNITIES GRANTED TO THE GOVERNMENT BY THE SUPREME COURT ARE UNCONSTITUTIONAL.

Congress has not incorporated any common-law immunity into the laws of this country. The common-law immunities referred to by the Justices of the Supreme Court were incorporated by Justices of the Supreme Court, but the Constitution does not grant the Justices of the Supreme Court the power to incorporate common-law immunities or anything else into the laws of the United States. Therefore, lawful authority did not incorporate the common-law immunities incorporated by the Justices of the Supreme Court. Thus, the common-law immunities granted to the Government by the Supreme Court are ***unconstitutional***. The common-law immunities granted to the Government by the Supreme Court are all based on how things ***WERE*** in England ***BEFORE*** the Constitution! The Constitution says that the Constitution is the supreme law of ***this*** country, so, that takes care of the old laws from England being supreme here.

Before the Supreme Court can establish any immunity based on the common-law, the Constitution or a law passed by Congress must incorporate the common-law into the federal law. Supreme Court Justice Brandeis points out in the 1938 case of *Erie R. Co. v. Tompkins* ***there is no federal common-law***. Obviously, federal judges cannot base decisions on something that ***does not exist***! The Constitution requires federal judges to ***uphold the Constitution and the laws of the United States.*** Without any support in the Constitution or in the laws of the United States, federal judges, including the ***Justices of the Supreme Court***, are ***without any authority or***

basis for sovereign, absolute, and qualified immunity.

In the case of *Marbury v. Madison*, Chief Justice Marshall makes it clear that sovereign, absolute, and qualified immunities cannot be based on common-law and that these immunities do not exist in the United States. He said,

> "Is it to be contended that where the law in precise terms, directs the performance of an act, in which an individual is interested, the law is incapable of securing obedience to its mandate? Is it on account of the character of the person against whom the complaint is made? Is it to be contended that the heads of departments are not amenable to the laws of their country? Whatever the practice on particular occasions may be, the theory of this practice will certainly never be maintained. No act of the legislature confers so extraordinary a privilege, nor can it derive countenance from the doctrines of the common law."
>
> "If one of the heads of departments commits any illegal act, under color of his office, by which an individual sustains an injury, it cannot be pretended that his office alone exempts him from being sued in the ordinary mode of proceeding, and being compelled to obey the judgment of the law."

In the 1793 Supreme Court case of *Chisholm v. Georgia*, Volume 2 of the United States Reports, page 419, Justice Wilson said,

> "If then it be true, that the sovereignty of the nation is in the people of the nation, and the residuary sovereignty of each State in the people of each State, it may be useful to compare these sovereignties with those in Europe, that we may

thence be enabled to judge, whether all the prerogatives which are allowed to the latter, are so essential to the former. There is reason to suspect that some of the difficulties, which embarrass the present question, arise from inattention to differences, which subsist, between them. It will be sufficient to observe briefly, that the sovereignties in Europe, and particularly in England, exist on feudal principles. That system considers the Prince as the sovereign, and the people as his subjects; it regards his person as the object of allegiance, and excludes the idea of his being on an equal footing with a subject, either in a Court of Justice or elsewhere. That system contemplates him as being the fountain of honor and authority; and from his grace and grant derives all franchises, immunities and privileges; it is easy to perceive that such a sovereign could not be amenable to a Court of Justice, or subjected to judicial control and actual constraint. It was of necessity; therefore, that suability became incompatible with such sovereignty. Besides, the Prince having all the Executive powers, the judgment of the Courts would, in fact, be only monitory, not mandatory to him, and a capacity to be advised, is a distinct thing from a capacity to be sued. The same feudal ideas run through all their jurisprudence, and constantly remind us of the distinction between the Prince and the subject. No such ideas obtain here; at the Revolution, the sovereignty devolved on the people; and they are truly the sovereigns of the country, but they are sovereigns without subjects and have none to govern but themselves; the citizens of America are equal as fellow citizens, and as joint tenants in the sovereignty.

> From the differences existing between feudal sovereignties and Governments founded on compacts, it necessarily follows that their respective prerogatives must differ. Sovereignty is the right to govern; a nation or State-sovereign is the person or persons in whom that resides. In Europe the sovereignty is generally ascribed to the Prince; here it rests with the people; there, the sovereign actually administers the Government; here, never in a single instance; our Governors are the agents of the people, and at most stand in the same relation to their sovereign, in which regents in Europe stand to their sovereigns. Their Princes have personal powers, dignities, and pre-eminences, our rulers have none but official; nor do they partake in the sovereignty otherwise, or in any other capacity, than as private citizens."

In the 1816 Supreme Court case of *Martin v. Hunter's Lessee*, Volume 14 of the United States Reports, page 304, Justice Story said,

> "The constitution of the United States was ordained and established, not by the states in their sovereign capacities, but emphatically, as the preamble of the constitution declares, by 'the people of the United States.' There can be no doubt that it was competent to the people to invest the general government with all the powers, which they might deem proper and necessary; to extend or restrain these powers according to their own good pleasure, and to give them a paramount and supreme authority. As little doubt can there be, that the people had a right to prohibit to the states the exercise of any powers which were, in their judgment, incompatible with the objects of the general compact; to make the powers of the state governments, in given cases,

subordinate to those of the nation, or to reserve to themselves those sovereign authorities which they might not choose to delegate to either. The constitution was not, therefore, necessarily carved out of existing state sovereignties, nor a surrender of powers already existing in state institutions, for the powers of the states depend upon their own constitutions; and the people of every state had the right to modify and restrain them, according to their own views of the policy or principle. On the other hand, it is perfectly clear that the sovereign powers vested in the state governments, by their respective constitutions, remained unaltered and unimpaired, except so far as they were granted to the government of the United States. These deductions do not rest upon general reasoning, plain and obvious, as they seem to be. They have been positively recognized by one of the articles in amendment of the constitution, which declares, that 'the powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.' The government, then, of the United States, can claim no powers which are not granted to it by the constitution, and the powers actually granted, must be such as are expressly given, or given by necessary implication."

IV. THE GOVERNMENT AND GOVERNMENT OFFICIALS DO NOT HAVE SOVEREIGN IMMUNITY.

In plain simple English, Justice Wilson and Justice Story said that Kings and Princes have sovereignty, but here *We the People* have the sovereignty; and the Government and Government officials do not have sovereign

immunity. An examination of the Declaration of Independence and the Constitution makes it clear that it is the Right of the people to **alter** (correct) **destructive** (unconstitutional) government. The Constitution explicitly guarantees, in the First Amendment, that each citizen will always have the Right and the opportunity to have his grievance against the Government heard. A United States citizen's Right to sue the Government for wrongs committed is a right retained by the People that has never been surrendered to the Government. Justice Matthews, in the case of *Yick Wo v. Hopkins* in 1855, said "**Sovereignty** itself is, of course, not subject to law, for it **is the author and source of law**; but in our system, while sovereign powers are delegated to the agencies of government, ***sovereignty itself remains with the people***, by whom and for whom all government exists and acts."

V. THE CONSTITUTION FORBIDS THE GOVERNMENT FROM USING THE DEFENSE OF SOVEREIGN IMMUNITY.

Thus, when a citizen of the United States sues the Government, the Constitution forbids the Government from using the defense of sovereign immunity. Sovereign immunity, when exercised as a defense by the Government to a suit brought by a citizen of the United States who petitions the Government for a redress of grievances, inhibits the exercise of the constitutionally protected Right of a citizen to petition for a redress of grievances. At the very least, sovereign immunity dictates and limits how citizens may petition the Government for redress of grievances. Dictating and limiting how citizens may petition the Government for redress of grievances is also forbidden by the First Amendment to the Constitution.

Federal judges require an express waiver of sovereign immunity by Congress before a citizen may bring a lawsuit against the Government. In effect, Federal judges are saying that Congress must first give its permission before a citizen may file a lawsuit against the Government. Before Congress may waive sovereign immunity, there must be something that grants the Government sovereign immunity. There is nothing in the Constitution or federal law that provides a grant of sovereign immunity. It is the expressed will of the People of the United States, stated plainly and specifically in the First Amendment to the Constitution of the United States, that the ***Government can be sued by a citizen***.

Federal judges, by requiring that Congress must first give its permission before a citizen may bring a lawsuit against the Government for a redress of grievances, have built upon a foundation not present in, and indeed contrary to, the Constitution. Assistant United States Attorneys go into federal courts on behalf of the Government and advocate sovereign immunity. The argument is nothing more than a request by the Government to be allowed to continue the ***Government's unconstitutional behavior***.

In the case of *Imbler v. Pachtman*, Volume 424 of the United States Reports, pages 422 and 423, the Supreme Court states that "public policy" requires absolute and qualified immunity for some Government officials. The "public policy" referred to by the Supreme Court is not found in the Constitution and it is not established in any law written by Congress. The Constitution grants the elected members of Congress the power to decide what "public policy" is. Congress has never established any such "public policy." In order to establish absolute and qualified

immunity for certain Government officials, Justices of the Supreme Court simply decided what the public policy is for our country. The Justices of the Supreme Court are not granted the power to decide what public policy is and then decide cases based on their own concept of what that public policy requires. According to the Constitution, the Supreme Court's functions are to decide cases based on what *is* in the Constitution and to interpret the laws *based on what Congress has already written*. It is the duty of the Justices of the Supreme Court to subordinate their own personal views and to subordinate their own ideas of what legislation is wise and what is not.

Why hasn't Congress established such a public policy? Congress might want to establish such a "public policy," or Congress might not want to, but regardless how Congress feels about it, ***the First Amendment prevents Congress from establishing such a "public policy!"*** "Congress shall make no law . . . abridging . . . the right of the people . . . to petition the Government for a redress of grievances." Establishing such a "public policy" would abridge (restrict) the right of the people to petition the Government for a redress of grievances. The Framers decided that these immunities are not necessary for the Government to fulfill its governmental functions.

In Article I, Section 6, the Constitution grants members of Congress *limited immunity* (they are in all cases, except treason, felony and breach of the peace, privileged from arrest during their attendance at, and in going to and from, the session of their respective houses, and they cannot be questioned in any place other than their respective House for any speech or debate in either House). Obviously, the Framers of the Constitution knew how to grant immunities to the Government. The Framers could

have granted the Government or any Government official any immunity they saw fit. However, they decided that sovereign, absolute, and qualified immunities are not necessary for the Government. The implementation of immunity defenses by Federal judges for the Government, or for Government officials, to suits brought against the Government by citizens of the United States has caused a tear in the cloth that is the foundation of this nation and infringes on a citizen's constitutional rights and freedoms.

The only purposes served by sovereign, absolute, qualified, and government contractor immunity are to (1) subject citizens to the abuses possible when Government officials enjoy unbridled discretion, (2) exert unlawful pressure on citizens not to go forward with grievances against the Government, (3) create a barrier behind which malicious Government officials go undetected and unpunished, and (4) allow Government officials to commit, perpetuate, condone, and conceal unlawful acts.

The Department of Justice does not protect the People's interests, as it should, by prosecuting offending Government officials. Rather, the Department of Justice rushes to defend Government officials guilty of a variety of unlawful behavior. The Government simply ***protects its unconstitutional behavior*** by **throwing up the sovereign immunity shield** – all in the name of good efficient government. Such behavior from the Government is not for the benefit of the People. The founders of our nation rebelled and ***threw off just such a government.***

In order for the sovereign immunities to be constitutional, the Constitution must grant Federal judges the power to create laws and the power to decide what immunities are necessary for the proper execution of the powers

vested in the Government or in any department or officer thereof. Of course, this is not so. To bring the Government into accord with the Constitution, Congress must declare that the First Amendment prohibits the Government from using the defense of sovereign immunity against suits brought by citizens and that the Constitution vests Congress and not Federal judges with the authority to establish any immunities necessary for Government officials.

In 1998 a lawsuit (CA 98-277-A) was filed in Federal court in Alexandria, Virginia challenging the constitutionality of (1) the Government's sovereign immunity when a citizen sues the Government, (2) the Supreme Court's discretionary review, and (3) the constitutionality of the Judiciary Act of 1925 (the Supreme Court's discretionary review and the Judiciary Act of 1925 are discussed separately in subsequent sections). The Government filed a motion to have the lawsuit dismissed. The citizen filed a response to the Government's motion and Chief Judge Claude M. Hilton issued a decision dismissing the lawsuit. Judge Hilton's reasons for dismissing the lawsuit are: (1) the citizen does not have the right to bring the lawsuit, (2) the citizen has not suffered any injury as a result of the Government's actions, and (3) the Government has sovereign immunity. An appeal was filed and the Court of Appeals issued a decision that upholds Judge Hilton's decision. A petition for a writ of certiorari was filed with the Supreme Court of the United States. The Supreme Court refused to hear the case! The Federal Judiciary stole our right guaranteed by the First Amendment to the U.S. Constitution to bring a lawsuit against the Federal Government! And for who's benefit? Can't possibly be for the benefit of the People!! What am I going to do about it,

knowing all of this? ***I will hunt down some British illegal ducks, so help me POPE!***

The Right of Redress BEFORE Taxes is an integral part of the Right To Petition for Redress of Grievances.

In an official Act of the Continental Congress, the founding fathers wrote: **"if money is *wanted* by rulers ("IRS") who have in any manner oppressed the People, they may retain it until their grievances are redress, and thus peaceably procure relief, without trusting to despised petitions or disturbing the public tranquility."** We have an inherent, unalienable Right to Redress Before Taxes, guaranteed by the First and Ninth Amendments to the Constitution of the ***United States of America***.

The American government is supposed to be organized to protect American citizens; but section 7241 "authorizes" the IRS to destroy them with impunity and *the judiciary is cooperating with the executive and legislative branches in a collective decision to deny the People their constitutional Rights.* ***Such acts of government are unconstitutional, null and void.***

The remedy, lay in a separation of governmental functions cast in terms of "the Governing power," "the Legislative power," and "the Judicative power." Each of these branches has certain powers, and each of these powers is limited, or checked, by another branch.

The Framers drew up our basic charter of conferring sufficient power to govern while withholding the ability to abridge the liberties of the governed. American system of government must have a continuing balance of power among the branches in order to work. If not, a weaker

branch will be unable to fight off encroachment. *Marbury v. Madison* (1803) asserted the court's power to review acts of Congress and invalidate those that conflict with the ***Constitution***. This court has a final test yet to pass proving that government claim of sovereign immunity is constitutional.

Here is how no less than the U.S. Supreme Court described the purpose of this separation of powers: "We start with first principles. The Constitution creates a Federal Government of enumerated powers. See U.S. Const., Art. I, 8. As James Madison wrote, "[t]he powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite." The Federalist No. 45, pages 292-293 (C. Rossiter ed. 1961). This constitutionally mandated division of authority "was adopted by the Framers to ensure protection of our fundamental liberties." *Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991) (internal quotation marks omitted). "Just as the separation and independence of the coordinate branches of the Federal Government serves to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front." Ibid. [*U.S. v. Lopez*, 514 U.S. 549 (1995)].

I won't say that the panel "erred" because that's not what this is. What the panel says as the judiciary is "L'etat c'est moi." (I am the state). Furthermore, this equates the judiciary with the thugs who are in charge of our government. That's not all. This American invented idea that Americans are loved by the Creator ("God") above all other people, are entitled to live as lavishly and carelessly on the

planet no matter how it affects other people or other species, and have the right to use our vast economic and military force to shape the destinies of other peoples and other sovereign nations so that we can continue sucking up a disproportionate share of the resources (money, gold, oil) of the planet is insulting and obscure.

Moreover, U.S. government is criminally complicit in the destruction of our Constitution and our Rights, yet no one has been brought to account. I am for one of the finest Constitutions in the world. I am for civil liberties and the ***rule of law.*** **Where do you stand, JUSTICES?** Are you for anarchy in place of the United States Constitution? In a free society such as America, no one, including the government of the United States of America is above the law. For the good of petitioner and **benefit of the People** this case merits judicial review, relief and vindication to ensure another crime like this one never occurs again due to the wrongful acts and omissions of federal employees.

The Fifth and Fourteenth Amendment due process clauses protect a petitioner from being denied certiorari without a hearing at which the petitioner would be informed of the reasons for the denial and given the opportunity to present his reasons against denial. The hearing need not be a formal hearing. *Board of Curators v. Horowitz*, 435 U.S. 78 (1978). Since no statute of Congress can confer constitutional powers, there is a constitutional right to review in the SCT, and it is a violation of the Equal Protection Clause to allow the SCT to pick and chose cases for review. The denial of certiorari is not made on merits. *State v. Baltimore*, 338 U.S. 912 (1950). The existence of jurisdiction without hearing is a violation of due process and equal treatment. The due process clause of the Fifth Amendment, which is binding on the federal

government, includes not only due process principles but also includes protections against government denials of equal protection. *Board of Curators v. Horowitz*, 435 U.S. 78 (1978).

For the above stated reasons petitioner's claim is exclusively based upon the United States Constitution. This Honorable Court must afford petitioner her fundamental United States Constitutional First Amendment Right to petition this Court for redress of respondents USA, et al.

The panel has "erred" in relying on respondents "sovereign immunity" claim and now the Highest Court must affirmatively establish its constitutionality, once and for all, or announce it to the whole World that The United States of America is lawless, unconstitutional, self invented terrorist nation plundering people from all over the world regardless of what the official communist – government's propaganda claims, **AFFIRMED** and/or **DENIED**.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

ELIZABETH KLIMAS
Pro se
Post Office Box 56944
Sherman Oaks, CA 91413
(818) 787-1491

March 21, 2005

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

ELIZABETH J. KLIMAS

Plaintiff-Appellant

v.

DEPARTMENT OF THE TREASURY; INTERNAL REVENUE SERVICE; IMMIGRATION & NATURALIZATION SERVICE; U. S. DEPARTMENT OF JUSTICE

Defendants-Appellees

MEMORANDUM*

Appeal from the United States District Court
For the Central District of California

District: 0973-2 : CV-03-05686-MMM
presiding judge: Margaret M. Morrow, District Judge
Date Filed: 8/11/03
Date order/judgment: 10/14/03

Submitted February 7, 2005*[1]

Before: Ferdinand F. FERNANDEZ, Susan P. GRABER, Ronald M. GOULD FILED AND ENTERED JUDGMENT.

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

*[1] The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Elizabeth J. Klimas appeals pro se the district court's judgment dismissing for lack of subject matter jurisdiction her action against the Department of the Treasury, Internal Revenue Service, Immigration and Naturalization Service, and the Department of Justice brought under 42 U.S.C. §§ 1983 and 1985. Klimas alleged that defendants violated her constitutional and civil rights, deprived her of equal protection, illegally assessed and collected taxes, and committed various torts against her.

We have jurisdiction under 28 U.S.C. § 1291. We review de novo a district court's dismissal for lack of subject matter jurisdiction, *Hughes v. United States*, 953 F. 2d 531, 535 (9th Cir. 1992), and for failure to establish a waiver of sovereign immunity, *Fidelity and Deposit Co. of Maryland v. City of Adelano*, 87 F.3d 334, 336 (9th Cir. 1996). We affirm the district court.

The district court properly found that the United States has not waived its sovereign immunity under any statute. See *Cato v. United States*, 70 F.3d 1103, 1107 (9th Cir. 1995). Further, Klimas has not shown state action under 42 U.S.C. § 1983 or a conspiracy under 42 U.S.C. § 1985. See *Gillespie v. Civiletti*, 629 F.2d 637, 641 (9th Cir. 1980). Nor may Klimas bring this action under *Bivens v. Six Unknown Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), because she did not file her suit against employees and officers of the federal government acting in their individual capacities.

Klimas's contention that the district court had jurisdiction to hear her suit under the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346(b) and 2671-80, fails because Klimas has not alleged that she exhausted her administrative remedies before bringing suit. See 28

U.S.C. § 2675(a); *Gillespie*, 629 F.2d at 640 ("The timely filing of an administrative claim is a jurisdictional prerequisite to the bringing of a suit under FTCA, and as such, should be affirmatively alleged in the complaint.") (internal citation omitted). Furthermore, the FTCA bars defamation actions, 28 U.S.C. § 2680(h), as well as claims related to the assessment or collection of tax, 28 U.S.C. § 2680(c).

Klimas has not alleged that she paid in full the taxes for which she now seeks a refund; that she filed a claim for a refund; or that any such claim had been denied or that six months had elapsed since she filed for a refund. Therefore, the district court properly determined that it had no jurisdiction to address her tax refund claims. See *Sorenson v. Secretary of Treasury*, 752 F.2d 1433, 1438 (9th Cir. 1985).

The district court also lacked jurisdiction over Klimas's complaint under Internal Revenue Code 26 U.S.C. § 7433 because she failed to allege specific violations of statutes or regulations and because she did not allege that she has exhausted her administrative remedies. See 26 U.S.C. § 7433(d)(1); *Conforte v. United States*, 979 F.2d 1375, 1377 (9th Cir. 1992).

Klimas's suit does not fall within the quiet title statutes because she does not allege that the government claims title to her property or holds property with her; not [sic] does she specify which liens she seeks to challenge or which procedure were allegedly violated when these liens were imposed. See 28 U.S.C. §§ 2409, 2409a and 2410.

Klimas's remaining contentions lack merit.

We decline to consider Klimas's claims against individual defendants named and new arguments raised for the first time in her reply brief. See *Martinez-Serrano v. INS*, 94 F3d 1256, 1259-60 (9th Cir. 1996).

AFFIRMED.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ELIZABETH J. KLIMAS, Plaintiffs, vs. DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, IMMIGRATION AND NATURALIZATION SERVICE, US DEPARTMENT OF JUSTICE, Defendants.	Case No. CV 03-5686-MMM (RC) ORDER ADOPTING REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE (Filed Oct. 10, 2003)

Pursuant to 28 U.S.C. Section 636, the Court has reviewed the Complaint and other papers along with the attached Report and Recommendation of United States Magistrate Judge Rosalyn M. Chapman, and has made a *de novo* determination.

IT IS ORDERED that (1) the Report and Recommendation is approved and adopted; and (2) plaintiff's complaint and action are dismissed for lack of subject matter jurisdiction, and Judgment shall be entered accordingly.

IT IS FURTHER ORDERED that the Clerk shall serve copies of this Order, and the Magistrate Judge's Report and Recommendation by the United States mail on the parties.

DATED: October 8, 2003

/s/ Margaret M. Morrow
MARGARET M. MORROW
UNITED STATES
DISTRICT JUDGE

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ELIZABETH J. KLIMAS, Plaintiff, vs. DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, IMMIGRATION AND NATURALIZATION SERVICE, US DEPARTMENT OF JUSTICE, Defendants.	Case No. CV 03-5686-MMM (RC) JUDGMENT (Filed Oct. 10, 2003)

Pursuant to the Order of the Court approving the recommendations of the United States Magistrate Judge, and adopting the same as the facts and conclusions of law herein,

IT IS ADJUDGED that Judgment be entered dismissing the complaint and action for lack of subject matter jurisdiction.

DATE: October 8, 2003

/s/ Margaret M. Morrow
MARGARET M. MORROW
UNITED STATES
DISTRICT JUDGE

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ELIZABETH J. KLIMAS,

Plaintiffs,

v.

DEPARTMENT OF THE TREASURY, et al.,

Defendants.

CASE NUMBER
CV03-5686-MMM (RC)

NOTICE OF FILING OF MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION AND THE LODGING OF PROPOSED JUDGMENT AND/OR ORDER

(Filed Sep. 19, 2003)

TO: All Parties of Record

Elizabeth J. Klimas
P. O. Box 56944
Sherman Oaks, CA 91413

You are hereby notified that pursuant to the Local Rules Governing Duties of Magistrate Judges, the Magistrate Judge's report and recommendation has been filed and a proposed judgment and/or order has been lodged on September 19, 2003, copies of which are attached.

Any party having objections to the report and recommendation and the proposed judgment and/or order shall, not later than October 2, 2003, file and serve a written statement of objections with points and authorities in suppport thereof before the Honorable Rosalyn M. Chapman, U.S. Magistrate Judge.

Failure to so object within the time limit specified shall be deemed a consent to any proposed findings of fact. Upon receipt of objections, or upon lapse of the time for

filing objections, the case will be submitted to the District Judge for disposition. Following entry of judgment and/or order, all motions or other matters in the case will be considered and determined by the District Judge.

The report and recommendation of a Magistrate Judge is not a final appealable order. A notice of appeal pursuant to Federal Rules of Appellate Procedure 4(a)(1) should not be filed until entry of a judgment and/or order by the District Judge.

CLERK,
UNITED STATES
DISTRICT COURT

Dated: September 19, 2003 By [Illegible]
Deputy Clerk

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ELIZABETH J. KLIMAS, Plaintiff, vs. DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, IMMIGRATION AND NATURALIZATION SERVICE, US DEPARTMENT OF JUSTICE, Defendants.	) Case No. CV 03-5686-MMM(RC)) REPORT AND RECOMMENDATION OF A UNITED STATES MAGISTRATE JUDGE) (Filed Sept. 19, 2000)

This Report and Recommendation is submitted to the Honorable Margaret M. Morrow, United States District Judge, by Magistrate Judge Rosalyn M. Chapman, pursuant to the provisions of 28 U.S.C. § 636 and General Order 01-13 of the United States District Court for the Central District of California.

BACKGROUND

On August 11, 2003, plaintiff Elizabeth J. Klimas, a non-prisoner proceeding pro se, filed a complaint against defendants United States Treasury Department, Internal Revenue Service ("IRS"), Immigration and Naturalization Service ("INS"),[1] and United States Department of Justice, claiming these agencies have taken various actions

[1] Pursuant to The Homeland Security Act of 2002, Pub. L. No. 107-296, § 471, 116 Stat. 2135, 2205 (2002), the INS was abolished effective March 1, 2003, and its functions were integrated into the newly created Department of Homeland Security.

against her in violation of her constitutional and statutory rights. Plaintiff's complaint is a rambling diatribe describing numerous wrongs perpetrated against her by various individuals and entities, such as her ex-husband and the Los Angeles Police Department,[2] since she came to this country in 1982. Plaintiff's complaint raises four causes of action against defendants: (1) deprivation of constitutional rights and privileges in violation of 42 U.S.C. §§ 1983 and 1985(2); (2) conspiracy to deprive plaintiff of the equal protection of the law in violation of 42 U.S.C. §§ 1983 and 1985(2); (3) intentional infliction of emotional distress; and (4) defamation. Complaint at 11:5-21, 21:14-23, 23:5-28:10. Plaintiff seeks compensatory and punitive damages. Complaint at 21:27-22:27.

DISCUSSION

I

"A trial court may act on its own initiative to note the inadequacy of a complaint and dismiss it for failure to state a claim. . . ." *Sparling v. Hoffman Constr. Co.*, 864 F.2d 635, 638 (9th Cir. 1988) (internal quotation marks omitted); *Omar v. Sea-Land Serv., Inc.*, 813 F.2d 986, 991 (9th Cir. 1987); *see also Franklin v. Murphy*, 745 F.2d 1221, 1227 n. 6 (9th Cir. 1984) ("A paid complaint that is 'obviously frivolous' does not confer subject matter jurisdiction, and may be dismissed sua sponte before service of process." (citations omitted)). Such dismissal may be made

[2] To the extent plaintiff intends any individual or entity referenced in her complaint but not named in the Complaint's caption to be a party to this action, her complaint does not comply with Federal Rule of Civil Procedure 10(a), which requires naming each defendant in the caption and body of the complaint.

without notice where the plaintiff cannot possibly win relief. *Sparling*, 864 F.2d at 638; *Omar*, 813 F.2d at 991.

A complaint should be dismissed only when it is clear the plaintiff can prove no set of facts in support of the claim that would entitle her to relief. *Neitzke v. Williams*, 490 U.S. 319, 326-27, 109 S.Ct. 1827, 1832, 104 L.Ed.2d 338 (1989); *Hishon v. King & Spaulding*, 467 U.S. 69, 73, 104 S.Ct. 2229, 2232, 81 L.Ed.2d 59 (1984); *Everest & Jennings, Inc. v. American Motorists Ins. Co.*, 23 F.3d 226, 228 (9th Cir. 1994). In considering dismissal, the court must accept the allegations of the complaint as true. *Albright v. Oliver*, 510 U.S. 266, 268, 114 S.Ct. 807, 810, 127 L.Ed.2d 114 (1994); *Hishon*, 467 U.S. at 73, 104 S.Ct. at 2232; *Smilecare Dental Group v. Delta Dental Plan of California, Inc.*, 88 F.3d 780, 782-83 (9th Cir.), *cert. denied*, 519 U.S. 1028 (1996). Moreover, pro se pleadings are held to a less stringent standard than those drafted by a lawyer. *Haines v. Kerner*, 404 U.S. 519, 520, 92 S.Ct. 594, 596, 30 L.Ed.2d 652 (1972) (per curium); *Karim-Panahi v. Los Angeles Police Dept.*, 839 F.2d 621, 623 (9th Cir. 1988).

II

"Under settled principles of sovereign immunity, the United States, as sovereign, is immune from suit save as it consents to be sued . . . and the terms of its consent to be sued in any court define that court's jurisdiction to entertain suit." *United States v. Dalm*, 494 U.S. 596, 608, 110 S.Ct. 1361, 1368, 108 L.Ed.2d 548 (1990) (citations and internal quotation marks omitted); *Hercules, Inc. v. United States*, 516 U.S. 417, 422, 116 S.Ct. 981, 985, 134 L.Ed.2d 47 (1996). In other words, "[i]t is axiomatic that the United States may not be sued without its consent and that the

existence of consent is a prerequisite for jurisdiction." *United States v. Mitchell*, 463 U.S. 206, 103 S.Ct. 2961, 2965, 77 L.Ed.2d 580 (1983). Moreover, the sovereign immunity of the United States cannot be avoided simply by naming federal governmental agencies as defendants. *Gilbert v. DaGrossa*, 756 F.2d 1455, 1458 (9th Cir. 1986); *National Commodity & Barter Ass'n, Nat'l Commodity Exchange v. Gibbs*, 886 F.2d 1240, 1245-46 (10th Cir. 1989).

The United States has not waived its sovereign immunity for suits brought under the civil rights statutes, including 42 U.S.C. §§ 1983 and 1985; therefore, plaintiff's first two causes of action are barred by sovereign immunity. *Davis v. United States Dep't of Justice*, 204 F.3d 723, 726 (7th Cir. 2000); *Affiliated Professional Home Health Care Agency v. Shalala*, 164 F.3d 282, 286 (5th Cir. 1999). Nor may this Court construe plaintiff's constitutional claims as a Bivens[3] action. "Bivens does not provide a means of cutting through the sovereign immunity of the United States itself." *Arnsberg v. United States*, 757 F.2d 971, 980 (9th Cir. 1985), *cert. denied*, 475 U.S. 1010 (1986); *Cato v. United States*, 70 F.3d 1103, 1110 (9th Cir. 1995). Therefore, this Court lacks subject matter jurisdiction to consider plaintiff's first two causes of action, which are barred by sovereign immunity. *Rivera v. United States*, 924 F.2d 948, 951 (9th Cir. 1991); *Clement v. United States*, 766 F.2d 1358, 1363 (9th Cir. 1985), *cert. denied*, 474 U.S. 1101 (1986).

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[3] *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971).

III

The Federal Tort Claims Act ("FTCA") "waive[s] the sovereign immunity of the United States for certain torts committed by federal employees," *Meyer*, 510 U.S. at 475-76, 114 S.Ct. at 1000; *Alfrey v. United States*, 276 F.3d 557, 561 (9th Cir. 2002). "The FTCA is the exclusive remedy for tortious conduct by the United States, and it only allows claims against the United States. Although such claims can arise from the acts or omissions of United States agencies, an agency itself cannot be sued under the FTCA." *Federal Deposit Insurance Co. v. Craft*, 157 F.3d 697, 706 (9th Cir. 1998) (citations omitted); *Kennedy v. United States Postal Serv.*, 145 F.3d 1077, 1078 (9th Cir. 1998) (per curiam); *Lance v. United States*, 70 F.3d 1093, 1095 (9th Cir. 1995) (per curiam). Here, plaintiff's third and fourth causes of action allege tort claims (intentional infliction of emotional distress and defamation) against agencies of the United States, but not the United States; therefore, these claims must be dismissed for lack of subject matter jurisdiction. *Craft*, 157 F.3d at 707.

Moreover, because of the deficiencies in plaintiff's complaint, this Court cannot substitute the United States as a defendant for the named federal agencies. First, this Court may not exercise subject matter jurisdiction under the FTCA until federal administrative remedies have been exhausted. 25 U.S.C. § 2675(a); *McNeil v. United States*, 508 U.S. 106, 113, 113 S.Ct. 1980, 1984, 124 L.Ed.2d 21 (1993); *Brady v. United States*, 211 F.3d 499, 502 (9th Cir.), *cert. denied*, 531 U.S. 1037 (2000).[4] "The timely filing of an

[4] Administrative remedies are exhausted under the FTCA when a claim "is first presented to the appropriate Federal agency and one of the following conditions is met: the claim is finally denied, or six

(Continued on following page)

administrative claim is a jurisdictional prerequisite to the bringing of a suit under the FTCA, and, as such, should be affirmatively alleged in the complaint." *Gillespie v. Civiletti*, 629 F.2d 637, 640 (9th Cir. 1980) (citation omitted. Here, plaintiff has not alleged she exhausted her administrative remedies regarding her third (or fourth) cause of action.

Second, Congress has expressly not waived sovereign immunity under the FTCA for "[a]ny claim arising out of . . . libel [or] slander. . . ." 28 U.S.C. § 2680(h). Thus, "defamation actions are expressly barred by [the FTCA]." *Guidry v. Durkin*, 834 F.2d 1465, 1471 (9th Cir. 1987). "When a claim falls within a statutory exception to the FTCA's waiver of sovereign immunity, the court is without subject matter jurisdiction to hear the case." *Mundy v. United States*, 983 F.2d 950, 952 (9th Cir. 1993). For all these reasons, plaintiff's third and fourth causes of action must be dismissed for lack of subject matter jurisdiction.

RECOMMENDATION

For the foregoing reasons, IT IS RECOMMENDED that the Court issue an Order: (1) approving and adopting this Report and Recommendation; and (2) dismissing plaintiff's complaint and action for lack of subject matter jurisdiction, and directing that Judgment be entered accordingly.

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months have passed without a final resolution having been made." *Burns v. United States*, 764 F.2d 722, 724 (9th Cir. 1985); 28 U.S.C. § 2675(a); *Jerves v. United States*, 966 F.2d 517, 519 (9th Cir. 1992).

DATE Sept. 18, 2003

/s/ Rosalyn M. Chapman
UNITED STATES
MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ELIZABETH J. KLIMAS, Plaintiffs, vs. DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, IMMIGRATION AND NATURALIZATION SERVICE, US DEPARTMENT OF JUSTICE, Defendants.	Case No. CV 03-5686-MMM (RC) ORDER ADOPTING REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE (Filed Sep. 19, 2003) PROPOSED

Pursuant to 28 U.S.C. Section 636, the Court has reviewed the Complaint and other papers along with the attached Report and Recommendation of United States Magistrate Judge Rosalyn M. Chapman, and has made a *de novo* determination.

IT IS ORDERED that (1) the Report and Recommendation is approved and adopted; and (2) plaintiff's complaint and action are dismissed for lack of subject matter jurisdiction, and Judgment shall be entered accordingly.

IT IS FURTHER ORDERED that the Clerk shall serve copies of this Order, and the Magistrate Judge's Report and Recommendation by the United States mail on the parties.

DATED: _____

_____
MARGARET M. MORROW
UNITED STATES
DISTRICT JUDGE

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ELIZABETH J. KLIMAS, Plaintiff, vs. DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, IMMIGRATION AND NATURALIZATION SERVICE, US DEPARTMENT OF JUSTICE, Defendants.	Case No. CV 03-5686-MMM (RC) JUDGMENT (Filed Sep. 19, 2003) PROPOSED

Pursuant to the Order of the Court approving the recommendations of the United States Magistrate Judge, and adopting the same as the facts and conclusions of law herein,

IT IS ADJUDGED that Judgment be entered dismissing the complaint and action for lack of subject matter jurisdiction.

DATE: _____

_____

MARGARET M. MORROW
UNITED STATES
DISTRICT JUDGE